

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUN 16 2005

LUTHER D. THOMAS, Clerk
By: _____
Deputy Clerk

OSCAR FRONTERA,

Petitioner,

: Criminal Action No.:
1:01-CR-0031-MHS

v.

UNITED STATES OF AMERICA,
Respondent.

: Civil Action No.:
1:05-CV-00905-MHS

:

MOTION TO AMMEND JUDGEMENT OF DENIAL PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 59 (e)

COMES NOW, the Petitioner, Oscar Frontera, pro se, in the above captioned case, pursuant to Federal Rules of Civil Procedure and moves this Honorable Court to ammend its judgement of denial of the Petitioner's "Motion to Dismiss the Indictment and Memorandum Brief in Support" issued on June 03, 2005, and as grounds therefore would state as follow:

1. Petitioner's motion was filed on January 24, 2005, and presented to the Court on March 02, 2005.

2. On April 01, 2005, the Court directed the United States government to respond to the allegations by May 02, 2005.

3. The Court construed the Petitioner's motion as a motion under 28 U.S.C. § 2255 and directed the United States to respond as such. The Court did not provide notice to the Petitioner pursuant to the decission of the Supreme Court in Castro v. United States, 540 US ___, 157 L Ed 2d 778, 124 S Ct ___.

4. On April 27, 2005, the United States answered the Petitioner's motion and asked for it to be dismissed due to the

due to the time bar imposed by the AEDPA on all habeas corpus petitions.

5. On June 03, 2005 the Court issued an order denying the 28 U.S.C. § 2255 motion for the reasons alleged in the response of the United States.

Under the provisions of Castro v. United States, 540 US ___, 157 LEd 2d 778, 124 SCT ___, a court intending to recharacterize a pro se litigant's motion as a 28 U.S.C. § 2255 was held required (1) to notify litigant of intended recharacterization and its consequences, and (2) to provide opportunity to withdraw or amend motion.

Here the Court failed to notify the Petitioner of its intent to recharacterize petitioner's motion to dismiss the indictment. Moreover, the Court ordered the United States to answer the motion as a 28 U.S.C. § 2255. The government's response asked the Court to dismiss the motion due to the untimeliness and never considered the claims and merits of the motion.

The Court accepted the government's answer and dismissed the "28 U.S.C. § 2255 motion" for the reasons stated in the government's response.

This lack of warning by the Court of its decision to recharacterize the motion prevented the Petitioner's motion from being heard on its merits.

Wherefore, the Petitioner, OSCAR FRONTERA, respectfully requests this Honorable Court to vacate the Judgement of Denial of his

"Motion to Dismiss the Indictment" pursuant to the provisions of Castro v United States, and in consideration of the facts and legal authority set forth within the Defendant's Motion to Dismiss the Indictment and Defendant's Reply to the Government's Response, grant his motion and issue an order dismissing the Indictment, with prejudice, ordering the judgement of conviction vacated, or in the alternative, ordering an expedited hearing on those matters and issues going to this Court's jurisdiction.

DATE: 06 JUN 05

Respectfully submitted



OSCAR FRONTERA, pro se
BOP No. 52027-019
Federal Correctional Institution
P.O. Box 1000
Loretto, PA 15940

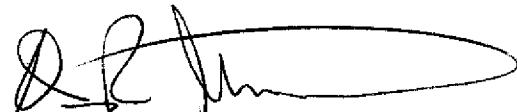
ATTESTATION

MOTION TO AMMEND JUDGEMENT OF DENIAL PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 59 (e)

UNITED STATES DISTRICT COURT)
) ss.

COMES NOW, the Petitioner, OSCAR FRONTERA, in the above entitled action, and states under oath and penalties of perjury that the allegations contained in the foregoing motion, wherein he is the Petitioner, and the United States of America, etc., are joined as Respondents, are the truth according to his best knowledge, information, and belief.

IN WITNESS WHEREOF, he has signed his name hereto this 04 th day of June, 2005.



OSCAR FRONTERA, Petitioner, Pro Se
BOP No. 52027-019
Federal Correctional Institution
P.O. Box 1000
Loretto, PA 15940

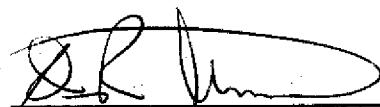
CERTIFICATE OF SERVICE

I hereby certify that I have mailed an original and copy(s) of the attached motion by first-class mail, postage pre-paid to the following:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
District Court Clerk
2211 U.S. Courthouse
75 Spring St., S.W.
Atlanta, GA 30303

OFFICE OF THE UNITED STATES ATTORNEY
William Traynor, AUSA
600 U.S. Courthouse
75 Spring St., S.W.
Atlanta, GA 30303

ANB, deposited same in the U.S. Mail by placing it in the Institution's legal mail box for inmates to be forwarded on the 07 th day of June, 2005.



OSCAR FRONTERA, pro se